

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-1320

Albert Schuholz,	*	
	*	
Appellant,	*	Appeal from the United States
	*	District Court for the Western
v.	*	District of Missouri
	*	
Robert McFadden; United States,	*	[UNPUBLISHED]
	*	
Appellees.	*	

Submitted: July 26, 2007
Filed: July 31, 2007

Before RILEY, MAGILL, and SMITH, Circuit Judges.

PER CURIAM.

Federal inmate Albert Schuholz appeals the district court's dismissal, as time-barred, of his complaint brought under the Federal Tort Claims Act. He also moves for leave to appeal in forma pauperis. We grant Schuholz leave to proceed in forma pauperis on appeal, see Henderson v. Norris, 129 F.3d 481, 484-85 (8th Cir. 1997) (per curiam), and for the reasons discussed below, we reverse and remand.

Upon de novo review of the record, see Duncan v. Dep't of Labor, 313 F.3d 445, 446 (8th Cir. 2002) (per curiam) (standard of review), we find that the district court erred in concluding that Schuholz's complaint was time-barred. This is because the complaint was presented to the district court in a timely manner on June 11, 2005:

through what appears to have been a misunderstanding in the clerk's office, the complaint was erroneously filed in an existing case, and by the time the error was discovered and the complaint was correctly filed as a new case on January 5, 2006, the six-month limitations period under 28 U.S.C. § 2401(b) had expired. When the complaint was filed as a new action, the district court clerk failed to docket it as having been filed on June 11, 2005--the date that the complaint was received in the district court. See Fed. R. Civ. P. 3 (civil action is commenced by filing complaint with court), 5(e) (defining "filing" with court).

Accordingly, the judgment is reversed and the case remanded for further proceedings consistent with this opinion.
